IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1301 OF 2007.

Rambaran Mohanlal Chourasia. ... Petitioner.
Versus.
Vasant C.Vaidya & others. ... Respondents.

Shri Jaydeo Trivedi holding for Shri M.P.Vashi for the Petitioner.

Ms.Preeti Pandey i/by M/s.Patras Kubad & Associates for the Respondents Nos.1 to 5.

CORAM : ABHAY S.OKA, J.

DATED : 20th April, 2007.

P.C.:

1. Submissions of the learned Counsel appearing for the parties were heard on the last date. The Petitioner is the Defendant in a suit filed by the Respondents. Interim notice was taken out by the Petitioner for the amendment of the Written Statement. By the order impugned in this Writ Petition under Article 227 of the Constitution of India, the learned trial Judge has rejected the prayer for amendment.

2. The suit is filed by the Respondents against the Petitioner seeking a direction against the Petitioner to remove himself from the unspecified and undemarcated portion of the land described in the plaint which is situated at Mahalaxmi Temple compound, Mahalaxmi, Mumbai, and to hand over vacant and peaceful possession of the open portion of land after removing the stall put up by the Petitioner. The first part of the amendment

specifies the area of the suit premises and otla allegedly in possession of the Petitioner. The second amendment is for raising a contention that the plot in question has been declared as a slum area. The third part of the amendment is for referring to an order passed in a writ petition filed by the Petitioner in this Court.

3. After having heard the learned Counsel appearing for the parties, I find that the said amendment deserved to be allowed. The Court is required to be liberal while considering the application for amendment of the Written Statement.

4. Considering the fact that the Respondents are Trustees of a public trust, the Petitioner will have to pay costs which is quantified at Rs.7500/-. The Advocate for the Petitioner has handed over a demand draft in the sum of Rs.7500/- to the Advocate for the Respondents in the Court.

5. Hence the following order is passed:

(i) The impugned Judgment and order dated 12th January 2007 is quashed and set aside. Interim Notice No.4 of 2007 taken out by the Petitioner is made absolute in terms of

prayer clause (a) thereof.

(ii) The amendment shall be carried out by the Petitioner within a period of four weeks from the date of receipt of writ of this order by the trial Court.

(iii) Hearing of the pending suit is expedited.

(iv) All contentions of the parties on merits of the suit are kept open.

(v) Writ petition is disposed of in the above terms.

Judge.